Supreme Court of the United States

October Term, 1938.

No. [redacted]

In the Matter
of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Debtor.

HOWARD S. PALMER, JAMES LEE LOOMIS AND HENRY B. SAWYER, TRUSTEES OF THE PROPERTY OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PRINCIPAL DEBTOR, AND OF OLD COLONY RAILROAD COMPANY, DEBTOR, and

MYRON F. CONVERSE, *et al.*,

Petitioners,

v.

THE COMMONWEALTH OF MASSACHUSETTS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

EDWARD R. BRUMLEY,
FRED N. OLIVER,
Counsel for Petitioners.

WILLARD P. SCOTT,
OSCAR M. SHAW,
R. AMMI CUTTER,
Of Counsel.

THE COURT PRESS, N. Y. C.

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HOWARD S. PALMER, JAMES LEE LOOMIS AND HENRY B. SAWYER, TRUSTEES OF THE PROPERTY OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PRINCIPAL DEBTOR, AND OF OLD COLONY RAILROAD COMPANY, DEBTOR, and

MYRON F. CONVERSE, *et al.*,

Petitioners,

v.

THE COMMONWEALTH OF MASSACHUSETTS,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

The petitioners, Howard S. Palmer, *et al.*,[1] Trustees of the property of The New York, New Haven and Hartford Railroad Company (hereinafter called the "New Haven") and of Old Colony Railroad Company (hereinafter called "Old Colony"); Myron F. Con-

[1] Howard S. Palmer, James Lee Loomis and W. M. Daniels were appointed Trustees of The New Haven on November 8, 1935, and Trustees of Old Colony on June 18, 1936. Daniels was succeeded by Henry B. Sawyer on March 10, 1937.

verse, *et al.*[2] as the Mutual Savings Bank Group Committee on New Haven Railroad Bonds, Old Colony Railroad Company, Debtor, and George Peabody Gardner, Jr. *et al.*,[3] as the Protective Committee of the Shareholders of Old Colony Railroad Company, pray that a writ of certiorari issue to review the decree of the Circuit Court of Appeals for the Second Circuit entered in the above cause on February 4, 1939 reversing an order of the District Court of the United States for the District of Connecticut, and respectfully represent:

The Opinions of the Courts Below.

The memorandum of decision of Judge Hincks in the District Court of the United States for the District of Connecticut has not been reported. It is dated July 9, 1938, and appears at pages 28 to 35 of the Record. The majority and dissenting opinions in the Circuit Court of Appeals for the Second Circuit have not yet been reported and appear at pages 141 to 150 of the Record.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 240, subdivision (a), of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, section 1, 43 Stat. 938; 28 U. S. C. A. §347 (a).

2. The decree of the Circuit Court of Appeals, entitled Order for Mandate, sought to be reviewed is

[2] Myron F. Converse, Theron A. Appolonio, John W. B. Brand, Robert C. Glazier, Charles F. Mann, Thomas W. Murray, Charles A. Post and George H. Woods.

[3] George Peabody Gardner, Jr., William Dexter, E. Sheldon Stewart, Eugene S. Taliaferro and Alexander Whiteside.

dated February 4, 1939 (R. 151). This decree reverses the order of the District Court and directs that the petition be dismissed.

Statutes Involved.

The statutes involved are set forth in the appendix, *infra*, pages 17 to 20, inclusive.

Summary Statement of the Matter Involved.

The New Haven and Old Colony, as separate corporations, are both in reorganization under Section 77 of the Bankruptcy Act[4] in the District Court for the District of Connecticut. Because operations of Old Colony were resulting in substantial deficits, the New Haven Trustees rejected the long term lease of Old Colony (and its leased line, the Boston & Providence), and since June 3, 1936, have operated the Old Colony for its own account.

Representatives of the security holders of Old Colony, and Old Colony, debtor, filed in the District Court on June 20, 1938, a petition (for Order No. 289, R. 2, 4-12) which recited facts conclusively showing that Old Colony was being operated at substantial losses and that the capital and assets of Old Colony were being consumed by unprofitable local passenger operations which endangered the continuance of all service, were confiscatory to the interests of its creditors and shareholders, and would impede the carrying out of any reorganization of Old Colony (R. 8, 9). The petition prayed that the Court direct the New Haven Trustees to effect economies in Old Colony passenger operations.

[4] Act of August 27, 1935, c. 774, 49 Stat. 911; June 26, 1936, c. 833, 49 Stat. 1969, 11 U. S. C. A. §205.

The petition also recited that at an early date, Old Colony security holders had requested the Trustees to take steps to effect economies in Old Colony operations, that studies had been made, and that the Trustees had applied on December 28, 1937 to the Department of Public Utilities of Massachusetts for written approval of the abandonment of 88 local passenger stations, and had advised the Department of proposed time-table changes which contemplated the discontinuance of certain trains and certain rearrangements in train service, and that the Department had consolidated the two matters for hearings which began February 23, 1938 and had not been concluded at the date of the petition (R. 7).

The answer of the Trustees admitted the necessity of effecting economies and to that end recommended specific changes in operations substantially in accordance with the application pending before the Department of Public Utilities. The Commonwealth of Massachusetts appeared generally in opposition to the petition (R. 2, 3) but filed no answer, did not at any time deny any allegation of the petition or of the Trustees' answer, offered no proof and cross examined no witnesses. At the end of the trial Massachusetts asked for and obtained a stipulation that "these hearings have not been completed and may not be completed for a considerable period of time in the future" and "the department has entered no order upon the application of the Trustees" (R. 96).

It is unnecessary to review in detail the uncontradicted evidence, summarized in Judge Hincks' Findings of Fact and Memorandum of Decision, which together with Order No. 289 (R. 28-35) was entered on July 9, 1938 after two days of hear-

ings. Judge Hincks' principal findings of fact (R. 28-31) were as follows:

1. On account of the operation of the owned and leased lines of Old Colony from October 24, 1935, to December 31, 1937, the Old Colony estate had been charged with $11,789,037 as a lien prior to its mortgage. Of this sum, $5,775,650 represented the deficit in the operation of property *owned* by Old Colony.

2. For 1937 the deficit in net railway operating income of Old Colony's *owned* property was $2,360,862, the freight service resulting in a profit of $275,278 and the passenger service in a deficit of $2,636,140. In 1938 the deficit was increasing at an even greater rate.

3. Highway competition, principally from privately owned automobiles, had caused a substantial and progressive reduction in the passenger traffic of Old Colony.

4. By the elimination of 93 passenger stations, 88 of which were in Massachusetts and by changes in train service, and by other economies that would thereby become possible, the deficit in operations accruing against Old Colony's *owned* properties alone could be reduced by over $658,899 annually.

Upon the whole record, Judge Hincks came to the following conclusions (R. 31-34):

1. The greater part of the reduction in passenger traffic by rail in the affected area is permanent.

2. "The reorganization of the Old Colony cannot be accomplished without the operating changes contemplated * * *.

"* * * For about three years these properties have been operated by the court through its trustees and during that time every practical means of

increasing traffic revenues has received careful consideration. Notwithstanding, it has proved impossible to operate on the basis of present service without a deficit. At the same time, an equal attention to the reduction of operating costs and taxes has proved ineffective to eliminate the deficit. Railroad labor is the largest single item of cost and it is impracticable, if not impossible, to negotiate for lower labor rates upon these lines independently of negotiation on a national scale. The emergency now existing on these lines will not permit of the delay and uncertainty inherent in such a program. Thus the only alternative is the elimination of service which fails to attract sufficient patronage to be self-supporting."

3. "Continuation of passenger service upon the present basis will jeopardize the ability of Old Colony to render freight service which is indispensable to the territory served.

"A privately-owned railroad cannot operate without capital, and Old Colony capital is now being depleted at a rate exceeding $10,000. per day."

4. "The changes sought are in the public interest.

"* * * the public interest in the long run will best be served by a policy which is calculated to protect indispensable freight service and to preserve that portion of the passenger service which is shown by experience to be the more vital rather than a policy which is daily bringing nearer the destruction of the entire enterprise."

5. "Failure to grant the relief sought would result in the confiscation of private property."

By final order, No. 289, dated July 9, 1938 (R. 34, 35) the Judge directed the Trustees "as promptly as possible to make effective the operating economies recommended by them by publishing

and putting into effect schedules substantially those recommended by them and annexed to their answer, * * * and by discontinuing, in their discretion, stops of passenger trains at the stations listed * * *, and to continue such schedules in effect until and unless they, in their discretion, determine that changes in schedules are desirable * * *."

On August 2, 1938 the Commonwealth of Massachusetts appealed on the sole ground that the District Court had no jurisdiction to enter Order No. 289 (R. 118, 119), and the Circuit Court of Appeals for the Second Circuit also allowed an appeal (R. 3). That Court reversed the Order and directed that the petition be dismissed (R. 141-147, 151), Circuit Judge Swan dissenting (R. 148).

The Question Presented.

Whether the bankruptcy court had, by virtue of Section 77 of the Bankruptcy Act or otherwise, power to direct its trustees to discontinue intrastate passenger service, irrespective of authorization by the state regulatory body normally having jurisdiction, where the discontinuance of such service would be necessary to accomplish reorganization under Section 77 and where the continuance of such service would result in losses for the railroad as a whole so great as to be confiscatory.

Specification of Errors.

The Circuit Court of Appeals erred:

1. In holding that the bankruptcy court had no power, either by virtue of Section 77 of the Bankruptcy Act or otherwise, to direct its trustees to discontinue intrastate passenger service, irrespective of

authorization by the state regulatory body normally having jurisdiction, even where the discontinuance of such service would be necessary to accomplish reorganization under Section 77 and where the continuance of such service would result in losses for the railroad as a whole so great as to be confiscatory.

2. In holding that, even where no plan of reorganization can be confirmed unless the proposed reduction of service is made, and the failure to grant the relief would result in confiscation, the bankruptcy court has no jurisdiction to protect the property of the debtor within its custody by curtailing such service.

3. In holding that where a state has set up a specialized tribunal normally having power to regulate intrastate service of railroads, Section 77 of the Bankruptcy Act, especially subdivisions (a), (c)(2), (c)(6), (f), and (o), does not give the bankruptcy court, acting alone, power to order the abandonment of confiscatory local service in cases where the approval of the Interstate Commerce Commission is not required.

4. In reversing the order of the District Court and ordering that the petition be dismissed.

Reasons Relied on for the Granting of the Writ.

The petitioners contend that the writ of certiorari should be granted for the following reasons:

1. *This case presents an important question of Federal law which has not been, but should be, determined by this Court.*

The Circuit Court of Appeals has decided by a divided court that Section 77 of the Bankruptcy Act

does not confer power upon the bankruptcy court to direct the discontinuance, essential to reorganization, of confiscatory local passenger service, to the exclusion of the state regulatory body normally having jurisdiction. This Court has not construed Section 77 in this respect. Of the five cases[5] decided by this Court involving Section 77 only two, *Continental Illinois National Bank & Trust Company* v. *Chicago Rock Island & Pacific Railway Company*, 294 U. S. 648, and *Ex parte Baldwin*, 291 U. S. 610, relate to jurisdiction, but neither deals with the question of the respective fields of jurisdiction of the bankruptcy court and state regulatory bodies.

The decision of the question presented involves construction of various provisions of the lengthy and complicated Section 77 of the Bankruptcy Act, especially subdivision (o), and also of Section 2 of the Bankruptcy Act and Section 65 of the Judicial Code.

The importance of the problem presented is apparent from the fact that approximately 26 per cent.[6] of the railroad mileage of the country is in the process of reorganization under Section 77. The effect of the decision of the Circuit Court of Appeals is to subject the many reorganizations now in progress to the probabilities of unreasonable delays and uncertainty at the hands of state regulatory bodies interested not in preserving instrumentalities of interstate commerce by reorganization under Section 77 but solely in local problems. It is of the utmost importance not only to the railroads undergoing reorganization under that

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[5] *Continental Illinois National Bank & Trust Co.* v. *Chicago, Rock Island & Pacific Railway Co.*, 294 U. S. 648 (1935); *Ex parte Baldwin*, 291 U. S. 610 (1934); *Lowden* v. *Northwestern National Bank*, 298 U. S. 160 (1936); *Connecticut Railway & Light Co.* v. *Palmer*, dec. Jan. 3, 1939, 83 L. ed. 268 (adv. op.); *Palmer* v. *Palmer*, dec. Jan. 9, 1939, 83 L. ed. 357 (adv. op.).

[6] See 106 Railway Age 37, 54, January 7, 1939.

section and their security holders, but to the public as well, that the respective jurisdiction of bankruptcy courts and state regulatory bodies under these circumstances be settled by this Court.[7]

2. *The decision of the Circuit Court of Appeals is in conflict with the decisions of this Court insofar as they have a bearing upon the question here presented and is erroneous.*

The Circuit Court of Appeals has decided a federal question, involving a conflict of jurisdiction between a bankruptcy court and a state regulatory body, in a way probably in conflict with the decisions of this Court, in so far as they are applicable.

The decision of the Circuit Court of Appeals denies to the bankruptcy court the power to protect property in its custody, a power which this Court has held to exist in cases of equity receivership. *In re Tyler*, 149 U. S. 164, 181 (1893); *Central Trust Co.* v. *Anderson County*, 268 U. S. 93 (1925). As the bankruptcy court has the power of a receivership court by Section 77(a), the broad principle laid down should apply in the case at bar. A similar power was recognized in cases arising under the Bankruptcy Act generally, prior to the enactment of Section 77. *Murphy* v. *Hofman Co.*, 211 U. S. 562 (1909); *Isaacs* v. *Hobbs*

[7] See statement in Annual Report of the Interstate Commerce Commission for 1938, at pp. 10-11:

"Three principal reasons account for the slowness in effectuating reorganizations [under section 77 of the Bankruptcy Act]:

. . . . . .

"(3) In the initial administration of any new law, legal questions arise which hinder progress until they are determined. Time is consequently consumed in the decision of the early cases, and oft-times in subsequent litigation, which is not required once stable precedents have been established."

Tie & T. Co., 282 U. S. 734 (1931). All of these cases proceed upon the fundamental power of the court to protect from invasion the property in its custody.

The broad purpose of Section 77 is shown plainly by its legislative history.[8] That purpose, the promotion and expedition of railroad reorganizations in the widespread financial crisis of the railroad industry, was recognized by this Court in *Continental Illinois National Bank & Trust Company* v. *Chicago, Rock Island & Pacific Railway Company*, 294 U. S. 648, 671, 672, 676, 685, *supra*.

Two decisions of this Court have followed the philosophy and principles involved in the earlier equity and bankruptcy cases. In *Ex parte Baldwin*, 291 U. S. 610, *supra*, this Court sustained the bankruptcy court in the exercise of its exclusive power to determine issues relating to the title and possession of the property of a railroad being reorganized under Section 77. In the *Rock Island case*, 294 U. S. 648, 676, *supra*, this Court said that a proceeding under Section 77 is not an *ordinary* proceeding in bankruptcy but a special proceeding which seeks only to bring about a reorganization. To prevent the attainment of that objective is to defeat the very end, the accomplishment of which is the sole aim of the section. The curtailment of service involved in the instant case was found in substance by the District Court to be a necessary step in the restoration of the earning power of the properties for the purposes of the ultimate confirmation of a plan and reorganization of the properties.

[8] 76 Cong. Rec. (72nd Cong. 2d Sess.) pp. 2902, 2908, 2917, 4880, 4884, 4907, 5107, 5117, 5136, 5350, 5360; 79 Cong. Rec. (74th Cong. 1st Sess.), pp. 13302-13309; Craven and Fuller "The 1935 Amendments of Railroad Bankruptcy Law", 49 Harvard Law Review 1254, 1259; Friendly "Amendment of the Railroad Reorganization Act", 36 Columbia Law Review 27-59.

In the *Rock Island* case it was held that to further the processes of reorganization, a district judge might enjoin the sale of collateral pledged with creditors, even though Section 77 contained no specific provision so authorizing, thus upholding the exercise of a power no more specifically conferred by the statute and no more essential to reorganization than is the exercise by the district judge of the power to enter the order here involved.

These two decisions, while not involving the precise question here presented, show that this Court has consistently adopted a construction of Section 77 sufficiently broad to bring about the fulfillment of its purposes. The Circuit Court of Appeals has here construed Section 77 so narrowly as to defeat these purposes.

The decision of the Circuit Court of Appeals is erroneous. It fails to give due consideration to the findings of Judge Hincks and to the applicable law. In the first place, Judge Hincks concluded that the reorganization of the Old Colony could not be accomplished without the operating changes contemplated (R. 32). On this point Circuit Judge Swan, in his dissent, said that Subsections (f) and (o), together with other provisions of Section 77, indicate "not only that the putting into effect of a confirmed plan of reorganization is not to be hampered by state regulatory authorities but also that the conduct of the debtor's business prior to confirmation is to be under the exclusive jurisdiction of the district judge, except where resort to the Interstate Commerce Commission is expressly required" (R. 149, 150).

In the second place, Judge Hincks concluded that failure to grant the relief sought would result in the confiscation of private property (R. 33). In his dis-

sent Circuit Judge Swan said, "enforcement of an order by the state commission refusing the proposed reduction of service could be enjoined" (R. 150). He cites the case of *Mississippi Railroad Com.* v. *Mobile & Ohio R. R. Co.*, 244 U. S. 388 (1917).

Section 77 provides comprehensively and expressly for the development of a plan of reorganization and for the administration of the estate pending reorganization in such a way as to facilitate the eventual framing and approval of a plan. To this end it grants broad jurisdiction to the bankruptcy court. Section 77, by giving the trustees, subject to the supervision of the bankruptcy court, full power to operate the properties, necessarily contemplates that essential operating changes will be effected promptly, and that the court, acting alone, through trustees, will bring these changes about, except in the case of complete abandonment of rails where approval of the Interstate Commerce Commission is expressly required, as distinguished from a partial abandonment of service.

As Circuit Judge Swan points out in his dissenting opinion (R. 149) there is complete absence of any language (such as is found in Section 77B, enacted the year previous to the 1935 revision of Section 77) requiring recourse to any state regulatory commission. This strongly indicates that Congress intended that no state regulation was to be permitted to impede a reorganization of an interstate railroad.

It is submitted that the principles laid down in the decision of the majority of the Circuit Court of Appeals, if allowed to stand, will defeat the whole purpose of Section 77, and that the dissenting opinion of Circuit Judge Swan correctly states the law applicable to the present case.

3. *The decision of the Circuit Court of Appeals in this case is in conflict with the decisions of other Circuit Courts of Appeals.*

The Circuit Court of Appeals held that the bankruptcy court had no jurisdiction to protect the property of the debtor by curtailing a confiscatory service and that it had no power, by virtue of Section 77 of the Bankruptcy Act or otherwise, to direct the discontinuance of confiscatory local passenger service on lines wholly within a state, but that this power continued to reside in a state regulatory body.

This decision is in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Crawford* v. *Duluth Street Ry. Co.*, 60 F. (2d) 212 (1932), and with that of the Circuit Court of Appeals for the Eighth Circuit in *State of Iowa* v. *Old Colony Trust Co.*, 215 Fed. 307 (1914). This conflict in respect to a subject of fundamental importance exists in a situation which calls for uniformity and where a decision by this Court will remove the conflict.

In *Crawford* v. *Duluth Street Ry. Co., supra*, the City of Superior and the State of Wisconsin appealed from the district court's order authorizing the abandonment of certain lines of a street railway by its receiver, without further awaiting action by the city council. The receiver had presented a petition for permission to discontinue operations on certain branch lines to the mayor and council who had held public hearings upon the petition but who had neither granted nor denied the petition. The Circuit Court of Appeals for the Seventh Circuit held that the district court could properly authorize the abandonment of service where the losses involved

in such service were so substantial as to endanger the operation of the system. In that case, as in this, the entire system was being operated at a loss, caused by the passenger service on three branch lines and the court recognized that relief was essential and could not be delayed pending possible action by the state regulatory body, otherwise there would be a deprivation of rights under the Constitution.

The majority opinion of the Circuit Court of Appeals in the instant case cites this decision but attempts to distinguish it on the ground that the plaintiff there had pleaded that the city council would not entertain their petition, although admitting that the court in the *Duluth* case did not put the result on that ground.[9] In the instant case the Circuit Court of Appeals denied that the District Judge had power to direct the Trustees to discontinue confiscatory service. *Crawford* v. *Duluth Street Ry. Co.*, *supra*, recognized such power.

State of Iowa v. *Old Colony Trust Co.*, 215 Fed. 307, *supra*, was a suit to foreclose a mortgage, in which the court, on petition of the receivers, directed them to dismantle and abandon a stretch of railroad. The State of Iowa, the railroad commissioners and others appealed. It was urged that under the state statute the district court of the

[9] The only finding of the district court relating to the inaction of the council appears in the record in that case at page 155:

"7. That the Receiver filed a petition with the City of Superior, Wisconsin, on November 5, 1930, for permission to abandon street railway operations and remove the equipment thereof from the branch lines of said system above designated; that the Mayor and Common Council of said City had public hearings upon said petition and had said matter for consideration before its Council meetings, but has not acted upon the same and said petition has neither been granted nor denied."

state was a special tribunal designated for administering the relief sought and the only tribunal authorized to do so. The Circuit Court of Appeals for the Eighth Circuit held that the federal district court had the power to make the order. It is submitted that this decision conflicts with that of the principal case. The distinction suggested in the majority opinion, based on the difference between a court and a specialized regulatory tribunal, is without significance here, since the questions involved are peculiarly appropriate for determination by the bankruptcy court—the tribunal to which Congress entrusted the administration of the reorganization.

The decision below is also in general in conflict with the principles laid down by the Circuit Court of Appeals for the Eighth Circuit in *Board of Directors St. Francis Levee District* v. *Kurn*, 91 F. (2d) 118 (1937), cert. den. 302 U. S. 750 and *Board of Directors St. Francis Levee District* v. *Kurn*, 98 F. (2d) 394 (1938), cert. den. 305 U. S. —, both of which held that the bankruptcy court had full power to protect the property of a railroad in reorganization under Section 77 from process in the state courts to enforce tax liens and full jurisdiction to adjudicate the validity and extent of all state tax claims and liens.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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APPENDIX A.

STATUTES INVOLVED.

Section 77(a) of the Bankruptcy Act, 11 U.S.C.A. §205(a) reads in part as follows:

> "* * * If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. * * *"

Section 77(c), 11 U.S.C.A. §205 (c) (2) reads in part as follows:

> "* * * The trustee or trustees so appointed, upon filing such bond, shall have all the title and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all of the powers of a trustee appointed pursuant to section 72 or any other section of this title, and, to the extent not inconsistent with this section, if authorized by the judge, the powers of a receiver in an equity proceeding, and, subject to the control of the judge and the jurisdiction of the Commission as provided by chapter 1 of Title 49 as on August 27, 1935, or thereafter amended, the power to operate the business of the debtor. * * *"

Section 77(f), 11 U.S.C.A. §205(f) reads in part as follows:

> "* * * Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding * * *."

Section 77(j), 11 U.S.C.A. §205(j) reads in part as follows:

> "In addition to the provisions of section 29 of this title for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree * * *."

Section 77(l), 11 U.S.C.A. §205 (l) reads as follows:

> "In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

Section 77(o), 11 U. S. C. A., §205(o) reads in part as follows:

"The trustee or trustees, from time to time, shall determine what lines or portions of lines of railroad and what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by chapter 1 of Title 49, as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale in accordance with the order of the judge. Any such order of the judge shall be a final order for the purposes of appeal. The judge may order and decree any sale of property, whether or not incident to an abandonment, under this subsection at public or private sale and subject to or free from liens. * * *"

Section 2 of the Bankruptcy Act, 11 U. S. C. A. §11, reads in part as follows:

"The courts of bankruptcy as defined in the previous chapter, viz., the district courts of the United States in the several States, * * * are made courts of bankruptcy, and are invested,

within their respective territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they were on July 1, 1898, or may be thereafter held, to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *"

Section 65 of the Judicial Code, 28 U. S. C. A. §124, reads:

"Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid state laws in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall wilfully violate any provision of this section shall be fined not more than $3,000., or imprisoned not more than one year, or both."